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OFFICE OF PETITIONS

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In re Application of :
ANGELOPOULOS et al. :
Application No. 09/492,210 : DECISION ON PETITION
Filed: 01/27/2000 :
Atty Docket No. YOR919990140 IBM-188 :

This is a decision on the "PETITION TO DETERMINE STATUS OF APPLICATION OR IN THE ALTERNATIVE, PETITION TO REVIVE AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)", filed August 17, 2009, which is being treated initially as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

This application was held abandoned for failure to timely pay the issue fee on or before January 7, 2002, in response to the Notice of Allowance and Issue Fee Due mailed October 5, 2001. In the absence of a timely filed reply, the Office held the application abandoned and mailed a Notice of Abandonment on April 18, 2002.

Petitioners assert that they timely submitted the Issue Fee Transmittal form, which included an authorization to charge the Deposit Account for the issue fee payment. To support this assertion, petitioners provided a copy of a return postcard acknowledging receipt on December 27, 2001, of a PTOL 85b form for this application, containing an authorization to charge the issue fee. Petitioners also submitted a copy of the Issue Fee Transmittal, which includes an authorization to charge the Deposit Account for the issue fee and any deficiencies, as well as a proper certificate of mailing.

The Issue Fee Transmittal, which the USPTO acknowledged as received, is not of record in the application file and has not been located to date. However, MPEP 503 states "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped

thereon by the USPTO." Therefore, it is concluded that the Issue Fee Transmittal, including the authorization to charge the Deposit Account for the issue fee, was timely received in the USPTO but lost after receipt thereof.

Accordingly, petition under 37 CFR 1.181 is **GRANTED**. The holding of abandonment is hereby withdrawn and the application is restored to pending status.

In view of the granting of the petition under 37 CFR 1.181 to withdraw the holding of abandonment, the petition under 37 CFR 1.137(b) to revive the present application is **DISMISSED** as moot.

The issue fee of \$1,280.00 due at the time of the submission of the Issue Fee Transmittal on December 27, 2001, will be charged to the Deposit Account as authorized. Additionally, the \$1,620.00 petition fee is unnecessary and will be refunded in due course.

This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

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